

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF TEXAS
2 TYLER DIVISION

3 SOVERAIN SOFTWARE)
4 -vs-) DOCKET NO. 6:07cv511
5) Tyler, Texas
5) 9:45 a.m.
NEWEGG, INC.) April 19, 2010

7 TRANSCRIPT OF VOIR DIRE OF THE JURY PANEL
BEFORE THE HONORABLE LEONARD DAVIS,
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S

FOR THE PLAINTIFFS: MR. THOMAS GIANNETTI
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19 ALSO PRESENT: MS. KATHARINE A. WOLANYK, SOVERAIN
MR. LEE CHENG AND MS. MIRA WOLFF, NEWEGG

20 COURT REPORTER: MS. SHEA SLOAN
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23 Proceedings taken by Machine Stenotype; transcript was produced by a Computer.

25

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1 PROCEEDINGS

2 (Call to Order of the Court.)

3 THE COURT: Please be seated.

4 All right. Good morning, Ladies and Gentlemen of
5 the Jury. I am United States District Judge Leonard Davis,
6 and we are about to start the trial of a civil case, and you
7 are here for jury selection this morning.

8 Let me tell you that this is what we would call a
9 patent case. It is a case where the plaintiff accuses the
10 defendant of infringing three of its patents that it holds.

11 Now, y'all have seen the video downstairs; is that
12 correct? Okay. So you know a little bit about the patent
13 system, if you didn't before, from that patent video.

14 I and the parties are going to have much more to say
15 about patent law, patent cases, and this case specifically and
16 what the patents are as the trial progresses. So I just
17 wanted you to have a general idea of what the case is about.

18 Now, we are going to select a jury this morning; and
19 once that is done, eight of you who are selected to be on the
20 jury will be seated, and then will come back next Monday for
21 the actual trial to begin.

22 Today is just going to be jury selection. I
23 anticipate that all of you should be released and go about
24 your business by noon today.

25 I do want to say that the trial, when it begins on

1 Monday, should conclude next week; but it will probably go
2 through Friday, so you should realize that if you are selected
3 to be on the jury today, basically today and all of next week
4 will be taken up with the trial of this case.

5 I do hope that you will consider it an honor to be
6 serving in jury duty today and not a burden. I know a lot of
7 people look at it that way. I know it is inconvenient for you
8 to be here when you have other things you need to be doing,
9 but it is really part of your commitment to service to your
10 country just as our military serves, just as our elected
11 officials serve.

12 We enjoy a right in this country to trial by jury
13 where a jury of peers can decide disputes between people that
14 have disputes. And that is not a privilege that is enjoyed or
15 a right that exists in most places in the world today. So it
16 is a very important right, and you are playing an important
17 part of it today. So I do hope that you will view it in that
18 manner, even though I know it is an inconvenience.

19 Now, what we are going to do today is to begin with
20 Voir Dire Examination, and I am going to be asking you some
21 questions, the attorneys are going to be asking you some
22 questions. This will probably talk about an hour, maybe a
23 little longer. Each side is then allowed to strike a certain
24 number of jurors, and the first remaining 8 jurors will be
25 sworn as the jury which will decide this case.

1 Those 8 of you that are selected will come back next
2 Monday morning, and you will begin by hearing opening
3 statements. That is what the attorneys expect the evidence
4 will show in this case.

5 That will be followed by a presentation of the
6 evidence with the plaintiff presenting evidence first and then
7 the defendant and then the plaintiff again.

8 After all of the evidence is in, you will then
9 receive what is called a Court's charge from me, which will
10 instruct you on the law and what factual questions you need to
11 answer.

12 And at the end of the case you will have half a
13 dozen short questions that you will answer that will be your
14 verdict in this case.

15 After you have received the Court's charge, you will
16 then hear closing arguments by the attorneys in the case.
17 That is what they believe that the evidence has shown and why
18 you should find a specific way. Then and only then would you
19 begin your deliberations in the case.

20 So that is sort of -- for those of you that are
21 selected -- what will be going on next week.

22 But today is Voir Dire Examination, and the purpose
23 of Voir Dire is to enable the Court to determine whether or
24 not any prospective juror should be excluded from jury service
25 either by the Court for cause or by Counsel for the parties by

1 way of a peremptory challenge. And that is one of those
2 strikes for which no reason need be given.

3 Now, "Voir Dire" is Latin phrase, which means "to
4 speak the truth," which I know each of you will do as you
5 answer the questions that will be asked of you this morning.
6 Please listen carefully to the questions that I will be asking
7 you, as well as the attorneys, and don't be timid about
8 speaking up if they apply to you.

9 If you are sitting there today and someone asks a
10 question and you are going, well, I don't know whether I
11 should answer because I am not sure it is correct -- you know,
12 100 percent on point, go ahead and answer anyway. There are
13 no right or wrong answers, and more information rather than
14 less is very important to this process.

15 Now, just to get to know each other a little bit, I
16 know you filled out a jury questionnaire and that is very much
17 appreciated and will be very helpful to the attorneys in
18 selecting this jury.

19 This jury questionnaire, by the way, the Court will
20 take all of that back up when the case is concluded, and our
21 courtroom administrator Ms. Ferguson will see that those are
22 all shredded, so all of your personal information on there
23 will not be passed on or made available to anyone.

24 But right now just to get you used to answering
25 questions and to give us a chance to get to know you, I would

1 like for each juror to introduce yourselves and just tell what
2 your favorite thing to do in your spare time is. So we will
3 start with Juror No. 1, Ms. Williams.

4 MS. N. WILLIAMS: My name is Nancy Williams. I am
5 from Jacksonville. My favorite thing to do in spare time is
6 just work in the yard and spend time with my kids and
7 grandkids.

8 THE COURT: Very good. Thank you.

9 MS. WHITWORTH: My name is Patsy Whitworth. I'm
10 from Rains County. And mostly I just work in the yard and
11 garden.

12 THE COURT: Okay. Thank you.

13 MS. DEVELIN: My name is Kristi Develin. I'm from
14 Carthage. My favorite thing to do is spend time with my two
15 children and my husband, and I love to read.

16 THE COURT: Thank you.

17 MS. RUSHING: My name is Patricia Rushing. I'm from
18 Carthage also. My favorite thing, I guess, is just spending
19 time -- when I have time after working -- just spending time
20 with family and just relaxing.

21 THE COURT: All right.

22 MS. VEERKAMP: My name is Betty Veerkamp. I live in
23 Ben Wheeler, Texas. I do a lot of crafting and also helping
24 out with neighbors, taking him to food banks and doctors'
25 appointments in my spare time.

1 THE COURT: Okay. Thank you.

2 MR. HURST: My name is Bob Hurst, and I was raised
3 here in Tyler. I went to the old John Tyler High School.
4 Attended Tyler Junior College. I worked for a company here
5 for several years, one of the foundries. I was a maintenance
6 supervisor. I had served an apprenticeship as a youngster, as
7 a pattern maker or tool and die work, so to speak.

8 I left Tyler when the crunch kind of hit on some of
9 the industries around here and they kind of went down the
10 tube, so to speak. And I moved to -- went to work for Lone
11 Star Steel as a maintenance supervisor there. The same thing
12 happened there. About ten years later I was laid off because
13 of a downturn in business with the steel companies. So I
14 moved back to Tyler.

15 I went to work for Tyler Pipe Industries as a
16 pattern maker, and stayed there until I retired. And now I
17 live at Lindale out in the country.

18 And my wife and I -- I have a daughter that teaches
19 school there in Lindale, and I've got a daughter-in-law that
20 teaches school in Whitehouse. And I have got a son that lives
21 out there in the country with me. He spent 18 years with J.
22 B. Smith here, and now he is a supervisor for Brookshire's at
23 Brookshire's Dairy.

24 THE COURT: All right.

25 MR. HURST: And that about brings it up to date for

1 me. Thank you.

2 THE COURT: Mr. Hurst, thank you.

3 Mr. Shafer.

4 MR. SHAFER: Chris Shafer. I'm from Kilgore. I
5 just like to putt around the house and spend time with the
6 kids.

7 THE COURT: Okay. Thank you.

8 All right. Ms. Stegall?

9 MS. STEGALL: My name is Becky Stegall. I'm from
10 Tyler, Texas. I'm a life-long resident. My favorite thing to
11 do is spending time with my husband and my daughter.

12 THE COURT: Okay. Thank you.

13 MS. HUFF: I'm Harriet Huff. I have recently
14 retired, and I like spending time with my 8 grandchildren.
15 I'm from Carthage.

16 THE COURT: Thank you.

17 MR. BOWLES: My name is Kelley Bowles. My favorite
18 thing to do is be with my grandkids. I like motorcycle riding
19 and fishing. I'm from Longview, Texas.

20 THE COURT: Thank you.

21 MR. HUTCHINSON: My name is Keith Hutchinson. I'm
22 from Longview, Texas. My favorite thing to do is swim.

23 THE COURT: Thank you.

24 MR. DAVIS: My name is Johnny Davis. I'm from
25 Malakoff, Texas. My favorite hobby is fishing and gardening.

THE COURT: Thank you, sir.

2 MS. CARTER: My name is Judy Carter, and I enjoy my
3 husband for 28 years; and then we have two kids and I have got
4 4 grandkids and enjoy every minute of that.

5 THE COURT: Okay. Thank you.

6 MS. C. WILLIAMS: I'm Connie Williams from Athens.

7 And I enjoy spending time with my family and working in the
8 yard.

9 THE COURT: Thank you.

10 MR. CROSS: My name is Brian Cross. I'm from
11 Mineola. And I enjoy fishing with my son and coaching his
12 baseball team.

13 THE COURT: Thank you, sir.

14 MS. COOKE: I'm Patty Cooke. I'm from Emory, Texas
15 in Rains County. And my favorite thing to do is spend time
16 with my new grandson.

17 THE COURT: Okay. Thank you.

18 MR. BOYD: My name is Jerry Boyd from Quitman, and
19 my favorite thing to do is square dance and work outside.

20 THE COURT: Thank you.

21 MS. BOYD: I am Alice Boyd. I live in Tyler -- here
22 in Tyler. And if I have any spare time, I love to play music
23 and listen to music.

24 THE COURT: Thank you.

25 MS. ALLEN: I'm Patricia Allen. I live in

1 Gladewater, Texas. I like to garden and read and learn new
2 things.

3 THE COURT: Thank you.

4 MR. NITSON: I'm Ronald Nitson. I go by Gene. My
5 favorite thing to do -- I live at Wills Point -- and my
6 favorite thing to do is run with my sheep out there; shear and
7 farm and all that.

8 THE COURT: Okay.

9 MR. McGEHEE: My name is Randall McGehee. I live in
10 Noonday. And I like to make art.

11 THE COURT: Okay.

12 MS. BARNETT: I'm Glenda Barnett from Yantis, Texas.
13 I enjoy traveling with my husband, working outside, and
14 family.

15 THE COURT: Okay.

16 MS. WALKER: I'm Claudia Walker from Jacksonville.
17 My favorite hobbies are spending time with grandkids,
18 gardening, and sewing.

19 MS. THOMPSON: My name is Connie Thompson. I'm from
20 Longview. My favorite thing to do is spending time with my
21 girlfriends and my family.

22 THE COURT: Okay. Thank you. All right. Thank
23 y'all for those introductions.

24 In just a moment I'm going to ask the attorneys for
25 each side to introduce themselves, their co-Counsel, their

1 clients, and also to identify for you the witnesses that they
2 expect to call to testify in this case.

3 And the reason I am going to ask them to do that is
4 to see if you know any of these people. So listen carefully
5 when they are going through listing their clients, their
6 co-Counsel and their witnesses and see if you know any of
7 those people.

8 There may be some from East Texas. There may be a
9 lot that aren't from East Texas. But after they have
10 indicated that, I am then going to ask any of you who know any
11 of them or any of the people they have listed, to please
12 stand; and we will have some more questions for you.

13 So at this time the Court will recognize Counsel for
14 the plaintiff to introduce themselves, their co-Counsel, their
15 parties, and their witnesses.

16 MR. ROTH: My name is Carl Roth. I'm from Marshall,
17 Texas. I practice over there --

18 THE COURT: Mr. Roth, you can go over to this podium
19 if you would like to where you won't have to have your back to
20 -- this one right here -- won't have to have your back to any
21 of the jury panel. I know that is hard to talk to people when
22 you are not able to face them there.

23 MR. ROTH: Do you want us to do the witnesses now,
24 Your Honor?

25 THE COURT: Yes, uh-huh.

1 MR. ROTH: I represent the plaintiff Soverain
2 Software in this case, along with the trial team from a firm
3 of Jones Day. Jones Day has got several offices around. With
4 us here today is Mr. Tom Giannetti from New York.

5 In addition to Mr. Giannetti is going to be Kenneth
6 Adamo.

7 And Mr. Adamo, Your Honor, there is some good news
8 about the results of a volcano because Mr. Adamo is lost
9 somewhere in Europe. I'm sure the Court will be glad to know
10 that. Because of the weather. Mr. Adamo will be here. He is
11 Lead Counsel.

12 Andrew Belenky -- there is a number of lawyers that
13 are listed here that may have some role in the case or appear
14 in the courtroom during the case. Don't expect that you have
15 to listen to all of these lawyers.

16 Andrew Belenky; Ken Canfield; Clark Craddock; Barry
17 Satine; Ognjan Shentov; Debra Smith; and Michael Smith, my
18 ex-partner, from Marshall.

19 Also with us today is two other of my lawyers;
20 Amanda Abraham sitting at counsel table and Brendan Roth, my
21 son, who practices with me in Marshall.

22 Our client is Soverain Software. Our client's
23 representative throughout the trial is Katharine Wolanyk.
24 Here is Ms. Wolanyk. She is the president of the company and
25 chief legal officer and pretty much runs the show there. She

1 is from Chicago.

2 The potential witnesses at the trial in this case
3 will include the following people: Jack Grimes, Tom
4 Levergood, James Nawrocki, Andrew Payne, Michael Shamos,
5 Lawrence Stewart, Winfield Treese, Ms. Wolanyk, Lee Cheng,
6 Lucy Huo, Rick Quiroga, and James Wu.

7 THE COURT: All right. Thank you, Mr. Roth.

8 Does anybody on the jury panel know Mr. Roth or any
9 of his partners or his co-Counsel from New York or Soverain's
10 president from Chicago or any of the other witnesses that were
11 listed? Any of those names ring a bell with anyone?

12 Yes, ma'am?

13 MS. VEERKAMP: I do know of Jones Day.

14 THE COURT: Okay.

15 MS. VEERKAMP: That's all.

16 THE COURT: All right. If you would stand, please
17 ma'am, and state your name.

18 MS. VEERKAMP: I'm sorry.

19 THE COURT: Here is the microphone for you. This is
20 the procedure we will follow with each of you. Whenever you
21 speak, please state your name again so the Court Reporter can
22 know who is speaking.

23 MS. VEERKAMP: Yes. My name is Betty Veerkamp, and
24 I do know of Jones Day from when I worked in Dallas.

25 THE COURT: Okay. Where did you work in Dallas?

1 MS. VEERKAMP: Haynes & Boone Law Firm.

2 THE COURT: And how long did you work for them?

3 MS. VEERKAMP: 20 years as a night word processor.

4 THE COURT: As a what?

5 MS. VEERKAMP: Night word processor. Mostly in the
6 corporate and legal -- real estate section.

7 THE COURT: Okay. So you just heard of the law firm
8 of Jones Day?

9 MS. VEERKAMP: Right, just heard of the law firm.

10 THE COURT: Thank you very much.

11 Anyone else?

12 All right. Counsel for defendant?

13 MR. SAYLES: May it please the Court.

14 THE COURT: Mr. Sayles.

15 MR. SAYLES: Good morning. I'm Dick Sayles. I'm a
16 lawyer from Dallas. I hope you won't hold that against me. I
17 have been in these courtrooms quite a bit.

18 Mark Strachan here is my partner. He grew up in
19 Longview, so some of you might recognize him.

20 Kent Baldauf is my co-Counsel.

21 And our client representative is Mr. Lee Cheng.

22 Lee, would you please stand up.

23 And seated at the counsel table is Mira Wolff. Mira
24 is an in-house lawyer with our client Newegg.

25 And the name of our client is Newegg. It is an

1 online retailer of electronic products.

2 The witnesses that we are likely to call in this
3 case are Lee Cheng, whom you just met; James Wu, who is the
4 chief technical officer of Newegg; Alexander Trevor, who is a
5 witness about facts, about some of the prior art. An expert
6 witness named Ed Tittel, who is a writer and author of a
7 number of books; and a witness named Chris Bakewell, who will
8 address the subject of damages.

9 THE COURT: Okay. Thank you.

10 All right. Does -- do any of the members of the
11 jury panel know Mr. Sayles or Mr. Strachan or any of their
12 co-Counsel, their corporate representative, or any of the
13 witnesses that he has listed?

14 Yes, sir. If you would please stand and state your
15 name?

16 MR. HUTCHINSON: Keith Hutchinson. And I know Mark
17 Strachan.

18 THE COURT: Okay. And how do you know Mr. Strachan?

19 MR. HUTCHINSON: Kind of grew up together, went to
20 church in Longview.

21 THE COURT: Okay. All right. Are you friends with
22 him --

23 MR. HUTCHINSON: I haven't seen him in about ten
24 years.

25 THE COURT: Okay. All right.

1 MR. HUTCHINSON: It's been a while. I didn't even
2 recognize him until his name --

3 THE COURT: So you don't visit in each other's home
4 or that type of thing?

5 MR. HUTCHINSON: No, sir.

6 THE COURT: Thank you. You may have a seat.

7 All right. Anyone else? All right. Very well.

8 All right. Now, in just a moment I'm going to allow
9 Counsel for each side to ask you some questions. But, first,
10 just let me ask you is there any reason right off the top of
11 your head that you can think of why you would not be a
12 qualified juror to hear this case just knowing what you know
13 about it, not very much? Anyone?

14 Yes, ma'am?

15 MS. N. WILLIAMS: I don't know if this counts; but I
16 am a teacher and next week is the State-mandated TAKS test,
17 and I teach dyslexic children, and they have certain
18 combinations and we have practiced with them all year long.
19 And it would be, I think, unfair to them for me to be away
20 from them next week, since they would have to have a stranger
21 they haven't worked with all year.

22 THE COURT: Thank you. Thank you for that
23 information.

24 All right. Anyone else?

25 Yes, sir? If you would, please stand.

1 MR. BOREN: My name is Jerry Boren. I don't know
2 if you need to know this, but the 28th and 29th I do have
3 dentist appointments lined up.

4 THE COURT: Okay. Thank you.

5 All right. Anyone else? Okay.

6 MS. BARNETT: Glenda Barnett from Yantis. I have a
7 close friend of 40 years that is expected to die at any time,
8 and I don't want to use that as an excuse, but it is something
9 I can't miss being with the family.

10 THE COURT: Thank you.

11 Anyone else?

12 MS. THOMPSON: I'm Connie Thompson. I, too, am in
13 the education field, and I too will be involved next week with
14 special ed students in testing.

15 THE COURT: Okay. Thank you.

16 Anyone else?

17 Yes, ma'am?

18 MS. WHITWORTH: My name is Patsy Whitworth, and I
19 have been passing out. Right now I'm on medication for it.
20 It is working, but they don't know if it will keep on working
21 or not.

22 THE COURT: Okay. Thank you.

23 All right. Anyone else?

24 All right. At this time the Court will recognize
25 Counsel for plaintiff for the purposes of Voir Dire.

1 MR. ROTH: May I ask the Court to give me a
2 15-minute warning and 5-minute warning?

3 THE COURT: 15 and 5?

4 MR. ROTH: Yes, sir.

5 THE COURT: Okay.

6 MR. ROTH: Good morning again, Ladies and Gentlemen.
7 As I said, I am Carl Roth from Marshall. I represent Soverain
8 Software in this case. I am very proud to be here
9 representing them in this courtroom this morning.

10 I was sitting over there thinking to myself a little
11 while ago that I really don't know anywhere else I'd rather be
12 or anything I would rather be doing than trying this lawsuit
13 for Soverain. And right away I know that that sets me apart
14 from everybody on the panel because without asking the first
15 question, I know that every one of you would rather be
16 somebody else if you had your druthers.

17 But the Court has explained to you how important it
18 is to be here for jury service, and there is a reason for
19 that. It is because it is the way that in our country we
20 resolve disputes between parties. And you heard the Court
21 already indicate to you there is a dispute between my client
22 Soverain Software and the defendant, Newegg.

23 Sovereign believes that Newegg is infringing its
24 patent rights. Newegg disagrees. They say they are not; and
25 they also say even if we were, your patents aren't any good,

1 they are invalid, shouldn't have been issued. So Soverain
2 filed this lawsuit to resolve that dispute and bring us all
3 together here today.

4 Now, these types of disputes are customarily

5 resolved in our system with the assistance of a jury. And a
6 jury is 12 people out of the community. We don't trust in our
7 system, for example, important disputes like this -- and this
8 is an important dispute -- it means a lot to both parties.

9 There is potentially a lot of money involved, as well as
10 important technology. And it is a very important decision.

11 And we don't leave these kind of decisions in our judicial
12 system to elected officials or governmental agencies. We use
13 a jury.

14 And we trust the jury, which is made up of 12 -- or
15 8 people in this case, out of the community to come in and
16 listen to the evidence and listen to the Court's instructions
17 as to what the law is and decide who is right and who is
18 wrong. And that is what is going to take place here today.

19 And as the Court indicated to you, our purpose here
20 today is to find out which 8 people are going to sit in
21 judgment and decide who is right and wrong in this case. And
22 it is important, of course, that we pick the best jurors for
23 that.

24 You are starting off with 24 of you that won the
25 Court's lottery, so to speak, and got summoned here today.

1 And it is kind of like American Idol, there are 8 of you that
2 get selected to come back next week.

3 But what we are entitled to, both sides, and what we
4 are looking for through this process, is to find the best
5 jurors for this particular kind of case. And we want fair and
6 impartial jurors.

7 Now, if I start down with Ms. Williams there and go
8 all the way through the list and say are you going to be fair
9 and impartial, everybody is going to say, of course, I am, I
10 am a fair and impartial and open-minded person. But, you
11 know, each of us comes into this courtroom with a lifetime of
12 experiences. And those experiences have an effect on our
13 beliefs and our beliefs of how we view and decide important
14 events.

15 And there are things that happen in our lives that
16 cause us to lean one way or another on particular issues. And
17 you might well be a fair and open-minded juror in one
18 situation and not in another type of situation.

19 Just take me, for example. You know, I have been
20 doing this now for some 46 years trying lawsuits. That is
21 probably why I enjoy being here. As a matter of fact, I was
22 thinking a minute ago I started 46 years ago at the courtroom
23 right down the end of the hall here.

24 But I have had a lot of dealings with insurance
25 companies over the years. And based on my experiences you

1 don't want me on a jury where an insurance company is a
2 party. I would try to be open-minded, but it is just not
3 going to be in me. I have had too many experiences that shape
4 my views.

5 So what we are going to do here today, as the Court
6 indicated, is to allow the parties to tell you a little bit
7 about the case and it is not much, not much facts will come
8 out because you are not being asked to decide anything today.
9 We are just looking for the best jurors to be the ones
10 selected to decide after hearing all of the evidence and the
11 Court's detailed instructions.

12 So I want to start off by finding out a little bit
13 more about you. I want to emphasize what the Court already
14 has alluded to, there are no right or wrong answers. We are
15 asking you about your opinions and your beliefs, and there are
16 no right or wrong answers. Everybody is entitled to their
17 opinion. And believe me the lawyers that are asking this
18 question, you are not going to hurt our feelings. This is a
19 process that we are asking for information to help find the 8
20 people who are best suited to decide this dispute between
21 these parties.

22 I want to start off by asking you a little more
23 detail, and the information that we have got from the
24 questionnaires that you took the time to fill out is going to
25 be very helpful to speed this process along. But let me start

1 off by asking each of you a few questions to elaborate a
2 little bit.

3 Let me start with Ms. Williams. What do you teach
4 at Jacksonville, Ms. Williams?

5 MS. N. WILLIAMS: I teach dyslexic children, grades
6 2 to 4; a few first graders that are repeating 1st grade, but
7 basically 2 to 4.

8 MR. ROTH: Your husband is a landman for who?

9 MS. N. WILLIAMS: He is self-employed.

10 MR. ROTH: Independent?

11 MS. N. WILLIAMS: Yes.

12 MR. ROTH: He probably knows about royalties --

13 MS. N. WILLIAMS: Yes.

14 MR. ROTH: -- in this day and time?

15 All right. Ms. Whitworth, you indicated that your
16 husband worked for Bell Helicopter. Can you tell us what he
17 did?

18 MS. WHITWORTH: He retired there about 20 -- let's
19 see, 14, 15 years ago; and we live in Rains County now.

20 MR. ROTH: And what did he do, what type of work?

21 MS. WHITWORTH: It was the instrumental part of
22 making the helicopters, tests. They made helicopters for
23 testing, and they tested them to see if they worked.

24 MR. ROTH: Was he at Fort Worth?

25 MS. WHITWORTH: Yeah -- yes, sir.

1 MR. ROTH: Thank you, ma'am.

2 Ms. Develin, and what do you teach?

3 MS. DEVELIN: I teach 2nd grade, 2nd grade.

4 MR. ROTH: 2nd grade. And you indicated your
5 husband is an operator. Where does he work?

6 MS. DEVELIN: At Spectra Energy.

7 MR. ROTH: Okay. Thank you.

8 Ms. Rushing?

9 MS. RUSHING: Yes, sir.

10 MR. ROTH: What is a DL coordinator?

11 MS. RUSHING: Distance education or distance
12 learning. Anything to do with online courses there at the
13 college.

14 MR. ROTH: And your husband is a dispatcher --

15 MS. RUSHING: Yes, sir. He is a dispatcher at
16 Just-In-Time Sanitation.

17 MR. ROTH: Okay. Thank you.

18 Ms. Veerkamp, I think you already answered the
19 question I had for you. You worked at Haynes & Boone?

20 MS. VEERKAMP: Yes, sir.

21 MR. ROTH: And did not work for any particular
22 lawyer --

23 MS. VEERKAMP: No, sir.

24 MR. ROTH: You were in the night type. Thank you
25 very much.

1 Mr. Hurst, I believe that you have given us a
2 complete history already of your employment, so we can pass it
3 on to Mr. Shafer.

4 And you indicated your wife is involved in data
5 entry?

6 MR. SHAFER: Yes, sir.

7 MR. ROTH: Could you describe her work for us?

8 MR. SHAFER: Well, I work at Alford-Pace Air
9 Conditioning. It is just an air conditioning firm, and she
10 does warranty claims and customer entry, registration, and new
11 equipment, that type of thing.

12 MR. ROTH: Okay. Thank you.

13 Let's see, Mr. Davis is a welder's helper. Believe
14 me, I know what that job is.

15 Ms. Carter, No. 13. You indicated you worked for
16 RDA. What is that?

17 MS. CARTER: It is a professional beauty supply.

18 MR. ROTH: Okay.

19 MS. CARTER: It is a wholesale place.

20 MR. ROTH: Okay. And your spouse is a nurse?

21 MS. CARTER: Yes.

22 MR. ROTH: Where is he employed?

23 MS. CARTER: He works for the Trinity Orthopedic
24 Clinic.

25 MR. ROTH: Okay. Thank you, ma'am.

1 Ms. Williams, what do you teach?

2 MS. C. WILLIAMS: I teach kindergarten.

3 MR. ROTH: Okay. Thank you.

4 Over to Mr. Cross. What do you do for AT&T?

5 MR. CROSS: Install and repair phone lines, land
6 lines.

7 MR. ROTH: Customer service rep?

8 MR. CROSS: Technician, yeah.

9 MR. ROTH: Thank you, sir.

10 Ms. Allen, what type of work do you do at Gregg
11 County Elections? It says electronics.

12 MS. ALLEN: Oh, I register voters. I help program
13 the voting machines during the elections; just whatever needs
14 doing. I work on the computer a lot.

15 MR. ROTH: Do you also go by Diane?

16 MS. ALLEN: Yes, sir.

17 MR. ROTH: Thank you, ma'am.

18 Mr. Nitson, it indicates that -- first of all, what
19 do you teach?

20 MR. NITSON: 7th grade Texas history.

21 MR. ROTH: Okay.

22 MR. NITSON: Pray for me.

23 MR. ROTH: And you indicated that your wife is an IT
24 manager. Could you describe what that means?

25 MR. NITSON: Not really because it is computers and,

1 you know, I am an ag major. So I know she does the hardware
2 that keeps everything up running and the hardware stuff so --

3 MR. ROTH: Who does she work for?

4 MR. NITSON: It is Old Castle Glass & Manufacturing.
5 They make the store fronts like you see at Brookshire's and
6 Wal-Mart. They do all that stuff.

7 MR. ROTH: All right. Thank you very much.

8 Mr. McGehee, what do you teach?

9 MR. MCGEHEE: I teach high school math, geometry at
10 the high school.

11 MR. ROTH: And your spouse is a teacher, too?

12 MR. MCGEHEE: Yes, she is an art teacher.

13 MR. ROTH: All right. Thank you very much.

14 Ms. Barnett, you are a retired teacher, physical
15 education?

16 MS. BARNETT: Yes, sir.

17 MR. ROTH: Okay. Your husband, you indicated what
18 was an electrical manager. Who does he work for?

19 MS. BARNETT: He was working for RES, Renewable
20 Energy Sources out of Colorado. Actually construct -- did the
21 high voltage on the windmills for electricity.

22 MR. ROTH: All right. Thank you, ma'am.

23 And, Ms. Walker, you indicated that your husband was
24 an insurance agent. Is he independent or with a company?

25 MS. WALKER: He is an independent agent.

1 MR. ROTH: Thank you, ma'am. And I apologize for my
2 remarks about insurance companies.

3 The last is Ms. Thompson. And you indicated that
4 your husband was an engineer at Texas Eastman; is that right?

5 MS. THOMPSON: Yes.

6 MR. ROTH: And does he have a technical degree?

7 MS. THOMPSON: Yes, he is a mechanical engineer.

8 MR. ROTH: Mechanical engineer?

9 MS. THOMPSON: Yes.

10 MR. ROTH: Thank you very much.

11 Let me talk a little bit about the parties in this
12 case. My client Soverain you probably haven't heard of
13 because they don't sell to the general public. Soverain is a
14 software company, and its customers are companies that are
15 engaged in selling products online or on the Internet, the
16 Worldwide Web.

17 The defendant, Newegg, as Mr. Sayles indicated, is
18 an online retailer; and they sell computer components,
19 cameras, televisions, and all sorts of electronic devices
20 online. They are one of the biggest online retailers I
21 believe in the world. They have about 2 billion dollars in
22 sales every year. I noticed a number of people on the panel
23 indicate that they do online shopping.

24 My question is, does anybody recall being a customer
25 online of Newegg? Nobody has been buying computers --

1 THE COURT: You've got one over here.

2 MR. ROTH: I'm sorry. Yes, sir, Mr. McGehee.

3 THE COURT: Mr. Roth, you have used 15 minutes also.

4 MR. ROTH: Thank you, Your Honor.

5 MR. MCGEHEE: Yes, I think I recall buying
6 something. I have no idea what it was. It has been a long
7 time. I just remember the name.

8 MR. ROTH: Well, is there anything about your
9 experience then that would cause you --

10 MR. MCGEHEE: I don't remember anything about the
11 transaction.

12 MR. ROTH: Nothing about it that causes you to
13 either love them or hate them?

14 MR. MCGEHEE: No.

15 MR. ROTH: Not going to affect your decision at all
16 in this case?

17 MR. MCGEHEE: No.

18 MR. ROTH: Thank you very much.

19 Let me tell you a little bit more about my client
20 Soverain. You are going to hear unfold during the course of
21 this case a story about some really bright guys up in Boston
22 back in the early '90s who with the very advent of the
23 Internet becoming something that was going to be publicly
24 available, used by the public and never been used for
25 commercial use at all; and they decided that if you are going

1 to have a successful retail market online that you needed to
2 have a program that would give a customer the same type of
3 experience they have if they go into a grocery store or a
4 mall.

5 It turns out there were an awful lot of technical
6 difficulties involved in getting this accomplished. It is not
7 nearly as easy as it might sound. But they overcame the
8 obstacles. They found the solution. And they came up with a
9 computer system and method with software that enabled
10 merchants to present their product descriptions to buyers
11 online, provide them with photographs and descriptions for
12 buyers to have a way to gather up their purchases and put them
13 in a shopping cart or shopping basket and then go back at a
14 later time and pay for them and complete the purchase. They
15 did all of this, of course, over what is known as the
16 Worldwide Web and Internet.

17 They were granted several patents as a result of
18 these revolutionary concepts and inventions. The inventors
19 created a software product that they call Transact, based on
20 these inventions, which was a pioneer product in allowing
21 companies to successfully market online.

22 They released their first version of Transact back
23 in October of 1994 very early on, and sold the product for use
24 by companies like AT&T and Disney and Time Warner and U.S.A
25 Today, and a number of others.

1 Soverain is the successor company to Open Market.

2 And it now owns the rights to these revolutionary patents.

3 Its headquarters are based in Chicago -- Ms. Wolanyk -- and
4 they have several employees around the country because they
5 still service their customers and still sell Transact and
6 service it for their customers.

7 In addition, they have licensed -- or given
8 permission -- to other major online retailers to use their
9 patented technology for their sales sites, websites; companies
10 such as Amazon and other major retailers.

11 Soverain believes that Newegg is using their
12 patented technology in their website to make their 2 billion
13 dollars a year in sales. And that is what this lawsuit is all
14 about. That is why we are here today.

15 A number of people have used the Internet to shop
16 online, and I will just suggest to you that -- well, let me
17 just ask --

18 Ms. Williams, I believe you were one. Do you not
19 shop online?

20 MS. N. WILLIAMS: Yes.

21 MR. ROTH: Do you do it very often?

22 MS. N. WILLIAMS: No. Holidays more especially.

23 THE COURT: If you would please stand, Ms. Williams,
24 and take the microphone.

25 MR. ROTH: Is this an experience where you can go

1 online and find a company you want to buy from and look up
2 their products, and they have pictures and descriptions?

3 MS. N. WILLIAMS: Not all of them.

4 MR. ROTH: Some of them do?

5 MS. N. WILLIAMS: Some of them do, yes.

6 MR. ROTH: And then you select the ones you want and
7 put it in a shopping basket?

8 MS. N. WILLIAMS: Yes.

9 MR. ROTH: And you have means to come back later and
10 deselect it or add to it --

11 MS. N. WILLIAMS: Yes.

12 MR. ROTH: Kind of like pushing your shopping basket
13 down the aisle at the grocery store, right?

14 MS. N. WILLIAMS: Yes.

15 MR. ROTH: You take it to the counter and you pay
16 for it all at one time?

17 MS. N. WILLIAMS: That's right, all at one time.

18 MR. ROTH: Thank you, ma'am.

19 Does anybody else have a different concept of
20 shopping online with these particular features the way people
21 do? Is that the common experience of everybody? Is there
22 anybody that has a different experience?

23 Is there anybody on the panel that tried to shop
24 online back in the '94/'95 time frame, if you even had a
25 computer with access?

1 One of the issues in this case is infringement.

2 And -- well, let's see.

3 Let me ask Mr. Hurst. Mr. Hurst, you indicated that
4 you owned property out there at Lindale?

5 MR. HURST: Yes, sir.

6 MR. ROTH: When you bought your property --

7 MR. HURST: Excuse me.

8 MR. ROTH: When you bought your property, you got a
9 deed, didn't you?

10 MR. HURST: Yes, sir.

11 MR. ROTH: And that deed gives a detailed
12 description of what Robert Hurst owns?

13 MR. HURST: Right; abstract.

14 MR. ROTH: It tells the whole world what part of the
15 property is yours?

16 MR. HURST: Right.

17 MR. ROTH: And it has boundaries. And if somebody
18 comes along and gets across your boundary line, what are they
19 called?

20 MR. HURST: If somebody comes along, well, then he
21 is infringing on my boundary.

22 MR. ROTH: He is a trespasser?

23 MR. HURST: Right.

24 MR. ROTH: Right. And you have a right to keep
25 trespassers off of your property, don't you?

1 MR. HURST: Yes, sir.

2 MR. ROTH: And you have those boundary descriptions
3 that you can go to and tell somebody, you are on my property?

4 MR. HURST: Right.

5 MR. ROTH: And you don't have permission to be?

6 MR. HURST: Right.

7 MR. ROTH: Of course, it is different if you give
8 them permission?

9 MR. HURST: Yes.

10 MR. ROTH: Okay. Well, thank you, Mr. Hurst.

11 I would like to talk about patent infringement. The
12 Court tells you it is a patent infringement case as being
13 similar to a trespass case. It is the same thing. A patent
14 is like a deed. It has detailed descriptions of the
15 boundaries of that intellectual property, the technology that
16 these people have been given a right to by the U.S. Patent
17 Office to use and to keep other people from using for a period
18 of years.

19 Now, is there anybody that has any problem with the
20 concept of keeping trespassers off of your property, or would
21 you have any problem with the idea that people should not be
22 allowed to use your property without permission? Does anybody
23 have any problem with that as a concept?

24 The Court is going to tell you that Soverain has to
25 prove its infringement case by a standard of preponderance of

1 the evidence. Preponderance of the evidence, the Court is
2 going to tell you, simply means the greater weight and degree
3 of credible evidence; or another way to put it is more likely
4 true than not true. That is going to be the standard, and
5 that is going to be our burden in this case to prove that
6 Newegg is infringing by that standard of more likely true than
7 not true.

8 Another issue that you will be faced with if
9 selected on a jury in this case is the question of damages.
10 Damages in a patent case are usually talked about in terms,
11 the Court will tell you, if you use somebody else's property
12 without permission you have to pay at least a reasonable
13 royalty. The Court will give you a lot of definitions about
14 that, and you will hear a lot of evidence about how to
15 calculate a reasonable royalty.

16 My question to you is -- very quickly -- is --
17 without going in any of the details -- but does anybody have a
18 problem with the concept that if somebody uses your property
19 without permission, they have to pay a reasonable royalty or
20 some fee for using your property? Does anybody have any
21 problem with that concept?

22 If it turns out that the evidence that you do hear
23 and the instructions the Court does give you on reasonable
24 royalty, if it turns out that based on that, the reasonable
25 royalty figure is a very large number, millions and millions

1 of dollars, would anybody have difficulty awarding what the
2 evidence supports by a preponderance of the evidence just
3 because it is a big number?

4 Anybody have some arbitrary limit, you know, I'd
5 award damages, but I'm never giving over a million dollars or
6 10 million dollars or 50 cents? Nobody has that kind of a
7 problem?

8 The next issue that you are going to have to decide,
9 on this jury, is the question of invalidity. And that is
10 going to be the burden on Newegg to prove that the Patent
11 Office made a mistake and never should have given these
12 inventors their patents, back in the '90s.

13 Now, that is going to be something they have the
14 burden of proof on. And one point I want to make about that
15 very quickly is that you will see that the Court's
16 instructions are going to tell you that Newegg's burden is not
17 preponderance of the evidence, or more likely true than not
18 true, that is, slightly tipping the scales of justice in our
19 favor as our burden of proof is. Their burden of proof is
20 clear and convincing evidence.

21 And the Court will define clear and convincing
22 evidence for you. And I want to read it because I don't want
23 to misstate it.

24 Clear and convincing evidence is evidence that
25 produces an abiding conviction that the truth of a factual

1 contention is highly probable, highly probable. If you are
2 looking at the scales of justice and preponderance of the
3 evidence is slightly tipping, clear and convincing evidence
4 requires the scales to tip very heavily.

5 It is not beyond a reasonable doubt like in a
6 criminal case where the scales have to be all one-sided
7 completely. But it is a stronger burden of proof. And the
8 reason is, is that Congress set up the patent system and the
9 Patent Office -- and you saw from the video what kind of work
10 you have to go through to get that patent through and get an
11 invention patented -- and there is a presumption that the
12 patent examiner experts knew what they were doing and did it
13 right.

14 THE COURT: Mr. Roth, you have about 3 minutes
15 left.

16 MR. ROTH: Thank you, Your Honor.

17 Now, so there is a double standard, and I just want
18 to point that out. Does anyone have a problem with applying
19 one standard of proof for one party and a different standard
20 for the other?

21 Anybody have any problem and think they would have
22 difficulty following the Court's instruction as to what the
23 burden is on the parties to prove their case?

24 I have a number of other areas to talk about, but it
25 appears to me that there was -- at least I saw in the five

1 minutes we had or so or 10 minutes on those questionnaires --
2 there was only one juror that had ever applied for or received
3 a patent, and I believe that was Mr. Bowles. Is that right?

4 MR. BOWLES: No, sir. That was my brother.

5 MR. ROTH: I'm sorry?

6 MR. BOWLES: That was my brother. He has his own
7 business.

8 MR. ROTH: Oh, okay.

9 MR. BOWLES: That's what that was.

10 MR. ROTH: That was not you, it was your brother.

11 MR. BOWLES: Right.

12 MR. ROTH: I didn't see it clearly. Is your brother
13 Danny?

14 MR. BOWLES: No, his name is Terry.

15 What kind of patents does he have?

16 MR. BOWLES: It is a motorcycle cover that fits a
17 wide variety of motorcycles, a light-weight cover.

18 MR. ROTH: Has he ever put it into commercial
19 production?

20 MR. BOWLES: Yes, sir, he has. It is actually in
21 force --

22 MR. ROTH: Are those patents something that he feels
23 are not just a piece of paper but something important to him?

24 MR. BOWLES: That's his deeds. That's his deed for
25 his product.

1 MR. ROTH: Thank you very much, Mr. Bowles.

2 Now, just one other question in closing. You
3 understand, I believe -- thank you, Mr. Bowles.

4 Does anybody else, by the way, have a patent? I
5 don't believe so. Or any member of their family?

6 I think you understand what we are looking for here
7 today. We are looking for people, 8 people who can be fair
8 and impartial jurors. Sometimes lawyers ask these questions
9 and cover all of these topics and try to suggest things that
10 might be of interest, but we frequently don't ask the right
11 questions.

12 And so now -- the Court had a question on that
13 questionnaire, do you have any reason why you shouldn't sit in
14 this lawsuit? But now that you have heard a little bit more
15 about the kind of case it is, a little bit more about the kind
16 of issues that you are going to be faced with, is there
17 anybody on the jury panel that has any doubt that if you are
18 selected as one of those 8 to come back next week, that you
19 can't be a fair and impartial juror; that you won't be able to
20 listen to the evidence that comes from the witness stand,
21 listen to the Judge's instructions as to what the law is, and
22 go back in this jury room and let the chips fall where they
23 may?

24 Is there any reason that anybody can think of,
25 whether it is because you don't like lawsuits? Don't like

1 people who file lawsuits? Anything that comes to find that
2 would cause you to feel that you would be less than a fair and
3 impartial juror as we have cited?

4 I thank you very much, and we look forward to
5 presenting our case to you -- before the 8 of you that win the
6 lottery for next week.

7 THE COURT: Thank you, Mr. Roth.

8 Mr. Sayles.

9 MR. SAYLES: May it please the Court.

10 Ladies and Gentlemen of the Jury Panel, here comes
11 the caboose. It is a little ways down the track, so bear with
12 me.

13 I want to start out by pointing out something to you
14 that you observed here that is going to continue throughout
15 the trial. That is the order of proof and the order in which
16 the lawyers go forward in this case.

17 And the law says that in a case where the plaintiff
18 has the burden of proof on their primary case -- and here it
19 is infringement -- they get to go first.

20 My concern about that is that psychologists tell us
21 that people make up their mind sometimes in the first 10 or 15
22 minutes that they hear about a subject. Well, if you sit
23 where I sit and you have to sit there and be quiet for 30
24 minutes, it gives you some concern. And no matter how flat
25 you make a pancake, there is two sides to it; and there is two

1 sides to every case.

2 So what I am going to ask you to do is remember that
3 Mr. Roth and his team get to go first just like Mr. Roth did
4 today. But I think that you would think it is fair to keep an
5 open mind -- to keep an open mind until you have heard all of
6 the evidence in the case from both sides and the charge of the
7 Court and the arguments of the lawyers.

8 And, Ms. Williams, I want to ask you, you have got
9 the coveted No. 1 seat, and this sometimes happens, can you
10 understand my asking that the jury keep an open mind?

11 MS. N. WILLIAMS: Yes, sir.

12 MR. ROTH: And since I go second, can you see the
13 point that I was trying to make there?

14 MS. N. WILLIAMS: Yes.

15 MR. ROTH: And if you are selected to sit on this
16 jury, do you think that you could resist human nature, which
17 is sometimes to make up a decision very quickly, and keep an
18 open mind until you have heard it all?

19 MS. N. WILLIAMS: Yes.

20 MR. SAYLES: Thank you.

21 There is even a book written called Blink. Has
22 anybody on the jury panel read the book called Blink. The
23 book is about how people in the blink of an eye make up their
24 mind about a person or situation. And, you see, in a court of
25 law that can be a dangerous things.

1 So having said that -- and I trust that all of y'all
2 understand that and will keep an open mind, but I want to give
3 you a brief two-minute outline of what the case is about from
4 Newegg's perspective.

5 First of all, Newegg has grown to be a premier and
6 excellent online retailer of mostly electronic products. It
7 started in 2000, and you are going to hear how it started in a
8 warehouse. When it first started, it had what was called a
9 static website, which meant you had to pick up the phone and
10 call, in order to do something.

11 But in the last ten years due to low pricing, good
12 customer service, fast shipping, and very high-quality goods,
13 it has grown into a large, and I will say, large company that
14 has warehouses in California; Memphis, Tennessee; and New
15 Jersey. So it is able to ship to all parts of the country and
16 deliver goods within just a couple of days.

17 You are also going to hear about an employee of
18 Newegg, whose name I mentioned, named James Wu. James Wu is
19 from China, but he has been in the United States since the
20 year 2000. And in the year 2000 he was given the task of
21 developing Newegg's website, which is involved in this case.

22 And Mr. Wu had never heard of Soverain or its
23 predecessor, which is Open Market, and another one called
24 Divine -- a name you haven't heard yet. He had never heard of
25 them and never heard of these patents. And over a period of

1 months, literally using spare parts and common sense and the
2 training he had as a computer programmer, he built and put
3 together the Newegg website that it still uses to this very
4 day.

5 Soverain in this case has asserted three patents
6 claiming that certain specific features of the Newegg website
7 infringe their patent, and they are asking for enormous
8 damages.

9 The evidence is going to show in great detail --
10 well, I will just briefly say now, that Newegg doesn't
11 infringe Soverain's patents. It doesn't do what their patents
12 claim. And what they invented was not new and novel. As you
13 heard in the patent video this morning downstairs, when that
14 occurs, a patent is invalid.

15 And then finally on damages. I just want to touch
16 on this briefly. The evidence will show that the damages in
17 this case are grossly overinflated and exaggerated. You will
18 hear the term whether a patented feature drives the demand for
19 these products. Here what drives the demand for these
20 products is the low price, the good service, the quality, the
21 shipping. And these features have very little, if anything,
22 to do with Newegg's success.

23 And the evidence is going to show that if real-world
24 evidence is considered, the most that these damages could be,
25 the most they could be is less than \$500,000, not the tens of

1 millions of dollars that Soverain is claiming.

2 Now, having said that, let me talk to you about the
3 burden of proof. It is correct that Soverain has the burden
4 of proof by a preponderance of the evidence, which Mr. Roth
5 described to you. And I would say to you now that you should,
6 when the Court gives you instructions and definitions, follow
7 those exactly as given by the Court. I wouldn't suggest
8 otherwise.

9 But the point here is that Soverain as the plaintiff
10 does have the burden of proof to prove infringement. And I
11 want to ask Mr. Cross, if I may, I'm going to talk to you
12 about the burden of proof here for just a moment. Everybody
13 listen because it is coming your way.

14 Mr. Cross, my having explained that Soverain has the
15 burden of proof proving their case of infringement, if you are
16 selected to sit on this jury, will you require them to meet
17 that burden of proof?

18 MR. CROSS: Yes.

19 MR. SAYLES: Would you require Newegg to prove
20 anything or disprove anything?

21 MR. CROSS: Yes.

22 MR. SAYLES: If the law says that Newegg doesn't
23 have to prove anything with regard to infringement but it is
24 Soverain's burden, could you do that?

25 MR. CROSS: If the law says?

1 MR. SAYLES: Yes, sir.

2 MR. CROSS: Yes.

3 MR. SAYLES: All right. I will tell you, and I
4 would be corrected by Mr. Roth right now if I were wrong, on
5 the issue of infringement Soverain has the burden of proof and
6 Newegg does not have to prove anything. If that is the law
7 that you hear from the Court's charge, will you abide by it?

8 MR. CROSS: Yes.

9 MR. SAYLES: Mr. Boren, how about you?

10 MR. BOREN: Yes. If the Court says so, yes, sir.

11 MR. SAYLES: Now, the Court's instructions place the
12 burden of proof, and if the burden of proof is placed on
13 Soverain, if you are over here in this jury box is that where
14 you would put the burden of proof?

15 MR. BOREN: Yes.

16 MR. SAYLES: And if I tell you now that Newegg
17 actually doesn't have to come forward with any proof on the
18 issue of infringement -- we will, but we don't have to --
19 would you be able to accept the law and look at the evidence
20 and consider the burden of proof and whether Soverain has met
21 the burden of proof?

22 MR. BOREN: If the Court says so.

23 MR. SAYLES: Okay. Now, I want to ask Ms. Boyd a
24 question while we are over here. Ms. Boyd, I'm going to
25 change a little bit. The Ladies and Gentlemen of the panel

1 heard that there is another issue in the case, and that is the
2 validity of these patents.

3 And on that I would be the first to tell you, but
4 Mr. Roth has already mentioned it, Newegg has the burden of
5 proof. It has to prove by clear and convincing evidence that
6 the patents are invalid. That was defined by Mr. Roth
7 correctly. The reason we know that is we have been in and out
8 of court before, and we know how the Judge instructs on that
9 issue.

10 Will you apply that burden of proof and only that
11 burden of proof on the issue of whether these patents are
12 valid or not?

13 MS. BOYD: Newegg has to prove that the patent was
14 valid?

15 MR. SAYLES: Invalid?

16 MS. BOYD: Invalid?

17 MR. SAYLES: Correct. The patent is presumed to be
18 valid. And to prove it invalid, Newegg has the burden of
19 proof. And it is clear and convincing evidence. Would you
20 listen to the Court's instruction; and if you hear that, would
21 you be able to apply that?

22 MS. BOYD: Yes.

23 MR. SAYLES: Now, here is the question. We have all
24 heard about proof beyond a reasonable doubt on television,
25 right?

1 MS. BOYD: Uh-huh.

2 MR. SAYLES: That's in criminal cases. That is the
3 highest burden of proof. That is not the burden of proof to
4 prove the patent invalid. It is kind of the middle level.

5 Do you think that you could apply that level of
6 proof and not require Newegg to prove the validity, invalidity
7 of this patent beyond a reasonable doubt because it is not
8 required to?

9 MS. BOYD: Yes.

10 MR. SAYLES: All right. I appreciate that.

11 It sounds awfully easy when I say it, but I want to
12 tell you that it is a little more difficult when you start to
13 think about it and apply it.

14 Ms. Stegall, let me ask you a question, if I may.

15 MS. STEGALL: Yes, sir.

16 MR. SAYLES: On the issue of infringement, on which
17 Soverain has the burden of proof, if you are selected to sit
18 on the jury, would you require Newegg to prove anything on
19 that issue?

20 MS. STEGALL: No, sir.

21 MR. SAYLES: All right. And if you are selected to
22 sit on this jury and you hear instructions on the issue of
23 validity that Newegg does have the burden of proof, would you
24 apply the clear and convincing standard if that is what the
25 Judge gives you?

1 MS. STEGALL: Yes, sir.

2 MR. SAYLES: And would you be able to promise us now
3 that you would not apply proof beyond a reasonable doubt?

4 MS. STEGALL: Yes, sir.

5 MR. SAYLES: Okay. All right. And, again, I tell
6 you that that sounds awfully easy. Is there anybody -- I'm
7 going to ask this in a general way, which is always a little
8 bit dangerous, but is there anybody who would not be able to
9 apply the law in the manner that I just said that Ms. Williams
10 and Ms. Stegall and others have mentioned, applying the
11 correct burden of proof, preponderance of the evidence, to
12 Soverain, not requiring Newegg to prove anything; but on the
13 issue of validity applying the middle level burden of proof,
14 which is clear and convincing evidence, not beyond a
15 reasonable doubt?

16 Is there anybody that thinks they cannot do that?
17 Because you understand this is my chance to find out. First
18 row, cannot do that? Second row? All right. Back here in
19 the pews in the third row, is there anyone who could not do
20 that?

21 You see, that is what I am most interested in.
22 Because it wouldn't be right for a juror who feels like, well,
23 you know, you ought to have to prove the invalidity of these
24 patents beyond a reasonable doubt. You may have that personal
25 feeling. It would be wrong for us to accept the juror who

1 felt that way. Back row?

2 Okay. All right. Now, one thing that should be
3 obvious is the courthouse doors in the United States are open
4 to everyone. And I am proud of that fact, and I bet you are
5 too. But what that means is that there is no Grand Jury that
6 pre-screens a civil case like this one. A party can file
7 their case and bring it forward in the courtroom, and the
8 courthouse doors are open.

9 My question is, is there anyone that would feel that
10 just because we are here before the Honorable Leonard Davis in
11 a nice large courtroom, that because we are here, there must
12 be something to this case before we even begin? Ms. Shafer,
13 how do you feel about that?

14 MR. SHAFER: That there's something to this case?

15 MR. SAYLES: Yes just because we are here.

16 MR. SHAFER: Yeah, it appears something is to this
17 case if we are all here.

18 MR. SAYLES: All right. I appreciate that. I'm not
19 going to quibble with you because that is what I wanted to
20 know. But we are supposed to start out both at the starting
21 line. Nobody ahead. I am concerned that because we are just
22 here, that someone might think, well, there must be something
23 to it. You have expressed you might feel that way?

24 MR. SHAFER: Sure.

25 MR. SAYLES: So do you think in this case that

1 Soverain would start out just a little bit ahead in your mind?

2 MR. SHAFER: Not necessarily.

3 MR. SAYLES: Tell me how you feel about that?

4 MR. SHAFER: That they wouldn't be ahead?

5 MR. SAYLES: Yeah, you say there must be something
6 to it; but on the other hand, you say they don't necessarily
7 start out ahead.

8 MR. SHAFER: Just what you said, the courthouse
9 doors are open for anybody, so it could go either way.

10 MR. SAYLES: All right. So, Ms. Williams --

11 Thank you, sir.

12 Ms. Williams. (Pause in proceedings.) That's
13 right. We have got two Ms. Williams. That's right.

14 All right. The courthouse doors are open to
15 anybody. Would you start out with Soverain ahead just because
16 we are here in this nice courtroom before the Honorable Judge
17 Davis?

18 MS. C. WILLIAMS: No, sir. You would have to hear
19 what both sides have to say.

20 MR. SAYLES: All right. Start even?

21 MS. C. WILLIAMS: Uh-huh.

22 MR. SAYLES: All right. Thank you very much.

23 All right. I could go through all of you and ask
24 that question. So I am going to ask you to search your soul
25 right now. And I want you to tell me right now if Soverain

1 would start out ahead in your mind even just a little bit
2 because here we are in court, so there must be something to
3 it? Anybody that would start out with them just slightly
4 ahead? Anybody on the first row? Anybody on the second row?
5 Going once, twice, three times. All right. Over here to the
6 third row, anybody? On the back row?

7 Now, nobody is saying anything. And you understand
8 that in representing Newegg, I have to take your silence now
9 the same as a solemn oath if you stood up and told me verbally
10 and out loud, nope, everybody is starting equally in my mind;
11 I understand just because we are here doesn't mean there is
12 anything to the case. That is what you are saying by your
13 silence. Does anybody want to change your answer?

14 All right. Judge, will you tell me when I have ten
15 minutes left. I don't think I asked for any time --

16 THE COURT: You have about 12 left.

17 MR. SAYLES: All right. Then I'm going to have to
18 speed it up. Large companies -- Newegg has enjoyed success
19 over the last ten years, and I think it is fair to say that it
20 is a large company. It has warehouses in three parts of the
21 country. It ships a lot of product.

22 Is there anybody on the first row that has ever had
23 a bad experience with a large company? Second row, anybody
24 ever had a bad experience with a large company? Over here on
25 the important third row -- and it is. Anybody ever had a bad

1 experience with a large company? Boy, if I make it to the
2 fourth row I'm going to be surprised. Anybody ever had a bad
3 experience with a large company? Hmm, well, that is good.

4 Let me put it this way: The law says that everyone
5 in court stands equal at the bar of justice, whether it is one
6 of us as an individual or whether it is a big company. And we
7 would all be very proud of the fact that an individual stands
8 equal to a big company. But don't you see the reverse of that
9 must be true also? A large company must be given a fair shake
10 just like an individual. And what I want to do is make sure
11 that that is going to take place.

12 And, Ms. Carter, I haven't heard from you in a
13 while. Would you speak to that, please? Could you treat a
14 larger company fairly at your hands, as a juror, just like you
15 would if it were against an individual?

16 MS. CARTER: Absolutely.

17 MR. SAYLES: Okay. Can you see why I would ask
18 that?

19 MS. CARTER: Uh-huh, yes.

20 MR. SAYLES: All right. Thank you.

21 Now, I want to go to the --

22 Will you tell me when I have five minutes, Judge?

23 THE COURT: Yes, I will.

24 MR. SAYLES: All right. I want to go to the issue
25 of damages, and this is very important in this case.

1 A reasonable royalty is going to be at issue in this
2 case, as it is in every patent case. Some folks feel as soon
3 as the lawyer representing the defense says anything about
4 damages, they are admitting there is a case. Let me say right
5 now, our position is that these patents were not infringed and
6 not a penny was owed.

7 But lawyers have a duty to cover all of the bases.

8 And you will hear Judge Davis give you instructions about
9 damages, if any. He will even say that, "if any." At some
10 point in the trial he is likely to tell you that just because
11 he is instructing you on damages, it doesn't mean there are
12 any.

13 Now, I am concerned. Ms. Huff, if I fight the issue
14 of damages and talk about damages, do you understand as a
15 lawyer I have that duty and obligation to my client?

16 MS. HUFF: Yes.

17 MR. SAYLES: What I would ask of you if you are
18 seated on the jury is you won't take that somehow as an
19 admission that we must have done something wrong or we must
20 have infringed these patents, otherwise we wouldn't talk about
21 damages?

22 MS. HUFF: Yes.

23 MR. SAYLES: All right. Can you understand why I
24 would ask you that question?

25 MS. HUFF: Uh-huh.

1 MR. SAYLES: All right. Now, because time is short
2 and because I grew up in the south and talk slow, I'm going to
3 have to do this by rows.

4 Is there anybody on the first row that would feel
5 that because Newegg is talking about damages, that they must
6 have done something wrong? Anybody feel that way? Because it
7 is not so. I need to know now. Anybody on the second row?
8 Over here on the third row, anyone?

9 Yes, ma'am? Let's get the microphone for you. This
10 is exactly what I wanted to find out because some people do
11 feel that way.

12 MS. ALLEN: I don't know anything about patent
13 trials and stuff, but it just comes across to me that if you
14 are already arguing damages, then there is an issue. I'm
15 sorry, but it just seems that way to me.

16 MR. SAYLES: All right. I understand that. That's
17 exactly why I asked this question.

18 Okay. And, Ms. Allen -- is that right?

19 MS. ALLEN: Yes, sir.

20 MR. SAYLES: Patricia, but you go by Diane?

21 MS. ALLEN: It is possible.

22 MR. SAYLES: Now, Ms. Allen was straight up with me
23 about that. Is there anyone else that feels the way that Ms.
24 Allen just expressed that she does? If I start talking about
25 damages it might imply or suggest that I did something wrong?

1 Because I have a duty to do that. Anybody else?

2 Thank you, Ms. Allen. I appreciate that.

3 MS. ALLEN: Sorry.

4 MR. SAYLES: Now, one final topic, and that is,
5 there are a couple of people that have worked for governmental
6 agencies. Patents are issued by the PTO or Patent and
7 Trademark Office, that y'all heard about this morning. And
8 they do carry a legal presumption of validity, but it is only
9 a presumption because the process of getting a patent occurs
10 in private. The parties who may be later accused don't
11 participate. The patent examiner may have made a mistake.

12 And so parties that are charged with infringing
13 patents can challenge the validity of a patent in court. Is
14 there anyone who would just fall back on the presumption of
15 validity and could not decide this issue in accordance with
16 the instructions given by the Court on what the burden of
17 proof is and in consideration of the evidence?

18 Anybody on this first row? See, because if you are
19 going to do that, we might as well not even start. Anybody on
20 the second row? Third row over here? The presumption of
21 validity can be overcome in court; otherwise, we wouldn't be
22 allowed to attack it. Anybody on the back row?

23 All right. I know that -- oh. Is there anybody on
24 the jury panel that knows one another? Anybody? Tell us --
25 let's get the microphone. I always like to know who is

1 acquainted with whom on a jury.

2 MS. RUSHING: I'm from Carthage, Texas. It's a
3 small town; 6, 7,000 people, so I am very familiar with Kristi
4 Develin and I also am familiar with Ms. Huff.

5 MR. SAYLES: All right. Very good. Thank you very
6 much.

7 I guess and would you tell us the same thing?

8 MS. DEVELIN: Yes, I'm familiar with Ms. Rushing
9 also.

10 MR. SAYLES: All right. If you are selected to be
11 on the jury, could you vote your own conscience even if you
12 happen to disagree with Ms. Rushing?

13 MS. DEVELIN: Oh, absolutely.

14 MR. SAYLES: Sometimes it is hard for acquaintances
15 or friends to do that.

16 Anybody else know anybody else?

17 MS. N. WILLIAMS: Jacksonville is a small town also,
18 and I know Ms. Walker.

19 MR. SAYLES: Could you vote your own conscience if
20 you are both on that jury and you both happen to disagree?

21 MS. N. WILLIAMS: Certainly.

22 MR. SAYLES: All right. I know that my time is
23 about to expire if it hasn't. So I want to wrap this up. We
24 look forward to bringing you the evidence in this case, and I
25 am sure that we will get 8 fair and impartial jurors. I want

1 you to keep an open mind through the whole case, even though
2 the plaintiff goes first.

3 I want you to hear it all. I want you to follow the
4 instructions of the Court on the burden of proof, which is not
5 beyond a reasonable doubt on this issue of validity. If you
6 will do that, that is all anyone could ask. And I look
7 forward to bringing you the evidence.

8 Thank you, Judge.

9 THE COURT: Thank you, Mr. Sayles.

10 All right. Ladies and Gentlemen of the Jury Panel,
11 that about concludes our Voir Dire Examination. I do want to
12 ask you one other question, and that is, having heard the
13 presentation by Counsel for the plaintiff and Counsel for the
14 defendant and knowing what you do about this case and
15 everything that you have learned so far, is there any reason
16 that maybe you have been sitting here and thinking this might
17 affect me as a juror or affect my ability to serve during the
18 trial of the case but you haven't had an opportunity to
19 express yourself?

20 If you would, please raise your hand at this time so
21 I can explore those matters with you? Anybody?

22 All right. Very well. Let me see Counsel at the
23 Bench, please.

24 (Bench conference held with Counsel.)

25 MR. SAYLES: Judge, Mr. Roth is a dear friend of

1 mine, and I have the highest regard for him. I had an
2 agreement with Ken Adamo that no licensees would be mentioned
3 in Voir Dire.

4 THE COURT: What?

5 MR. SAYLES: No licensees would be named in Voir
6 Dire. He named Amazon. We haven't crossed that bridge yet.
7 So I just wanted to let the Court know I am not waiving
8 anything. I had that agreement with Mr. Adamo. It took me by
9 surprise when he mentioned Amazon by name.

10 THE COURT: Do you have anything you want the Court
11 to do?

12 MR. SAYLES: Yes. I would ask that you instruct the
13 jury that the mention of Amazon earlier may or may not be in
14 evidence. I don't know if it makes it worse. Do you know
15 what I am saying?

16 MR. ROTH: It was my understanding that the names of
17 people who have gotten licenses are going to be admitted.

18 MR. SAYLES: Well --

19 MR. ROTH: We were not going to talk about the
20 amount of the license but the fact that people have a
21 license --

22 MR. SAYLES: Maybe --

23 MR. ROTH: -- is admissible.

24 MR. SAYLES: Maybe, maybe not. I had an express
25 agreement with Ken Adamo --

1 THE COURT: We'll sort that out later. Let's get
2 back to the jury list.

3 MR. SAYLES: I'm sorry, Judge.

4 THE COURT: Does plaintiff have any challenges for
5 cause?

6 MR. ROTH: No.

7 THE COURT: Does defendant?

8 MR. SAYLES: No, but I am willing to let a couple
9 go.

10 THE COURT: Are y'all going to let Ms. Williams go,
11 who is the teacher with the TAAS test?

12 MR. ROTH: I don't have a problem.

13 MR. SAYLES: I don't either.

14 THE COURT: She will be excused.

15 MR. ROTH: That was Ms. Williams.

16 THE COURT: What about the lady passing out and on
17 medicine --

18 MR. SAYLES: I would agree to let her go.

19 THE COURT: Would you agree to No. 2?

20 MR. ROTH: No. 2, yes, Your Honor.

21 THE COURT: Okay. She is excused for cause by
22 agreement then.

23 And then the lady [sic.] with the dentist
24 appointments, I don't really think that's that good of an
25 excuse.

1 MR. SAYLES: I --

2 THE COURT: No. 17 -- we have got plenty of jurors.

3 I will let him go.

4 MR. SAYLES: That will be all right with me?

5 THE COURT: Carl?

6 MR. ROTH: That's okay.

7 THE COURT: I'll excuse Mr. Boren.

8 Let's see, the lady whose very close friend is about
9 to die?

10 MR. SAYLES: I would agree.

11 MR. ROTH: Yeah, let her go.

12 THE COURT: And Ms. Thompson, who has the TAAS test
13 for special ed?

14 MR. SAYLES: I would let her go, yes, sir.

15 MR. ROTH: That's fine, Your Honor, you've got 22
16 and 23 --

17 THE COURT: 22, 24, 17, 1, and 2 -- let me see
18 here --

19 MR. ROTH: That leaves 19.

20 THE COURT: That's 19. You each have 5 peremptory
21 challenges.

22 MR. SAYLES: Very good. Would you mention those
23 numbers again, Judge?

24 THE COURT: Yeah 1, 2 --

25 MR. ROTH: I ought to get 6 and he get 5.

1 THE COURT: 1, 2, 19 [sic.], 22, and 24.

2 MR. SAYLES: Okay.

3 THE COURT: And you each get five strikes.

4 MR. SAYLES: Very good.

5 MR. ROTH: We'll have one left.

6 THE COURT: Yes.

7 MR. ROTH: We can fix that, Judge. You can give me
8 6 and give him 5.

9 (Bench conference concluded.)

10 THE COURT: All right. Ladies and Gentlemen of the
11 Jury, at this time the Court is going to take a brief recess
12 while the attorneys go over their lists. What I am going to
13 ask you to do is we will be on break for about 15 minutes
14 until 35 minutes after the hour.

15 So you can go to the hall, use the restroom, get you
16 a Coke down the hall. There is a Coke machine at the other
17 end if you want one. So be back in 15 minutes.

18 When you come back in you can sit anywhere in the
19 audience. You don't have to be in any particular order.

20 I do want to give you this instruction: Do not
21 discuss the case among yourselves or with anyone else as far
22 as what you heard or any observations or anything. Talk about
23 the weather or what you did this weekend, anything else; but
24 do not discuss this case.

25 All right. At this time we will be in recess for 15

1 minutes until 35 after.

2 (Recess was taken at this time.)

3 THE COURT: Please be seated. All right. Please
4 be seated.

5 All right. Ms. Ferguson, if you will call the names
6 of the jurors.

7 And as your name is called, if you will come
8 forward, and the Court Security Officer will show you where to
9 sit.

10 THE CLERK: Juror No. 1, Kristi Develin. Juror No.
11 2, Robert Hurst. Juror No. 3, Becky Stegall -- or Stegall
12 (different pronunciation.) Juror No. 4, Harriet Huff. Juror
13 No. 5, Kelley Bowles. Juror No. 6, Johnny Davis. Juror No.
14 7, Connie Williams. And Juror No. 8, Brian Cross.

15 MR. SAYLES: May we approach?

16 THE COURT: Yes.

17 (Bench conference held with Counsel.)

18 MR. STRACHAN: We had struck No. 10, Kelley Bowles.

19 THE COURT: Excuse me?

20 MR. STRACHAN: We struck No. 10, Kelley Bowles.

21 THE COURT: Ms. Ferguson?

22 THE CLERK: Yes, Your Honor.

23 THE COURT: They indicated that they struck No. 10,
24 Kelley Bowles.

25 (Pause in proceedings.)

1 THE CLERK: They did.

2 THE COURT: We will have a recess and re-seat the
3 jury.

4 (Bench conference concluded.)

5 THE COURT: All right. Ladies and Gentlemen of the
6 Jury, we have had a little glitch here in our process, so we
7 are going to -- I'm going to give you another about a 5-minute
8 recess, and I'm going to ask you all to be seated out there
9 and start again. So we will be in recess for 5 minutes.
10 Please go ahead and go to the hallway and take a short break.
11 Then we'll have you come back in and sit down, say, at 10
12 minutes until 12:00 o'clock.

13 (Recess taken.)

14 (Jury panel out of the courtroom.)

15 THE COURT: Please be seated.

16 All right. I understand we have another issue with
17 the panel. This is about as confused as we have ever gotten,
18 so I will see if we can get it straightened out here.

19 I believe that when we were discussing strikes for
20 cause, that it was agreed between the parties that we would
21 strike Juror No. 1; No. 2; and No. 17, Mr. Boren, who had the
22 dentist appointment; and No. 22; and No. 24.

23 Then after we had agreed to that on the record, Mr.
24 Sayles asked if I could repeat those numbers, and I repeated
25 them; but I read the wrong number. Instead of Juror No. 17, I

1 read Juror No. 19. So everything is somewhat confused now.

2 And the plaintiff was apparently thinking correctly
3 that Juror No. 17 was struck. The defendant was thinking
4 incorrectly, but for good cause because I had misstated it,
5 that Juror No. 19 was excused for cause.

6 So what I would -- and then we have the other issue
7 of Ms. Ferguson missed the strike to Juror No. 10, so what the
8 Court would propose to do is just give you your strike lists
9 back and let you proceed with making your strikes afresh.

10 Is that agreeable to both sides?

11 MR. ROTH: Your Honor, may I propose another
12 solution is just to take Juror No. 19 off? The parties have
13 seen each other's strikes at this point. We did have one in
14 common, but I don't think --

15 THE COURT: You did No. 19 in common, you say?

16 MR. ROTH: No, Your Honor. There is a common
17 strike, but we have both -- you know, we have told each other
18 who we struck. And my suggestion to the Court is rather than
19 have us restrike the whole panel, they struck -- it is my
20 understanding their complaint is they struck their list with
21 the assumption that No. 19 had been excused. And the
22 plaintiff would be willing to let the Court go ahead and
23 excuse No. 19 and then correct their strike No. 10, which they
24 had struck which didn't come in.

25 THE COURT: All right.

1 MR. ROTH: And just go ahead and seat the jury that
2 way.

3 THE COURT: Is that agreeable --

4 MR. SAYLES: That is acceptable.

5 THE COURT: We will do it that way then.

6 Ms. Ferguson, if you will -- then what we are doing
7 we are excusing Juror No. 19 for cause; and Juror No. 10 was
8 struck for cause, so I believe that would push us over one
9 more where -- who would be our next one after Juror No. 15
10 that has not been struck?

11 MR. ROTH: Be No. 20, Your Honor.

12 THE COURT: No. 20. Mr. Nitson would become Juror
13 No. 8.

14 Is that your understanding, Mr. Sayles?

15 MR. ROTH: That is correct, Your Honor.

16 MR. SAYLES: That is correct, yes.

17 THE COURT: All right. So our jury is now that will
18 be called will be No. 3 -- Juror No. 3, Ms. Develin. No. 6,
19 Mr. Hurst. No. 8, Ms. Segall. No. 9, Ms. Huff. No. 12, Mr.
20 Davis. No. 14, Ms. Williams. No. 15, Mr. Cross. And No. 20,
21 Mr. Nitson.

22 Is that correct?

23 MR. SAYLES: Yes, Your Honor, it is.

24 THE COURT: Correct?

25 MR. ROTH: That's correct, Your Honor.

1 THE COURT: Any objections from either side?

2 MR. SAYLES: No objection from the defense.

3 MR. ROTH: No objection from the plaintiff.

4 THE COURT: All right. We have a jury.

5 Please bring the panel in.

6 (Jury panel returns to the courtroom.)

7 THE COURT: Please be seated.

8 All right. Ladies and Gentlemen, we are going to
9 start over here and see if we can't get it correct this time.
10 That was a clerical error on our point. Sometimes it gets a
11 little complicated.

12 Ms. Ferguson, if you will call the jurors' names.

13 If your name is called, will you come forward and
14 please be seated.

15 THE CLERK: Juror No. 1, Kristi Develin. Juror No.
16 2, Robert Hurst. Juror No. 3, Becky Stegall. Juror No. 4,
17 Harriet Huff. Juror No. 5, Johnny Davis. Juror No. 6, Connie
18 Williams. Juror No. 7, Brian Cross. Juror No. 8, Ronald
19 Nitson.

20 THE COURT: All right. If the 8 members selected
21 for the jury, would you please rise and raise your right hand,
22 Ms. Ferguson will administer the oath to you.

23 (Jury sworn.)

24 THE COURT: Please be seated.

25 All right. I'm going to release everyone in just a

1 moment, if those in the audience will just bear with me.

2 You have now been sworn in as the jurors who will
3 decide this case. I have some preliminary instructions that I
4 would like to give you. I would like for you to listen to
5 them carefully and be sure you follow them.

6 You have now been sworn as the jury to try this
7 case. Until this trial is over, you should not discuss this
8 case with anyone; and do not permit anyone to discuss this
9 case in your presence. This includes your family and
10 friends. Do not discuss the case even with the other jurors
11 until all of the evidence has been completed and all of the
12 jurors are in the jury room actually deliberating at the end
13 of the case.

14 So that means when you go home tonight and your
15 spouse asks you, well, what happened, you can say I got picked
16 on a jury. And they can say, what kind of case? And you can
17 even say patent case. But it needs to stop right there. You
18 need to not go into who it is between or what it is about or
19 anything of that nature.

20 The same thing with your co-workers and same thing
21 with each other. When you come back on Monday morning and we
22 start the trial, you will be assembling in the jury room,
23 which is this room right through this door (indicating) before
24 the case actually starts.

25 Again, you should not discuss this case. And the

1 reason for this is very simple. You, the jury, are to decide
2 this case from the evidence that you hear here in this
3 courtroom from the witness stand and from the exhibits that
4 are admitted. So it would be improper for you to have any
5 conversation with anybody until all of the evidence is in, and
6 you are all beginning to deliberate in the case.

7 If anyone should attempt to discuss this case or to
8 approach you concerning this case, you should inform the Court
9 immediately. I do not anticipate that that will happen, but
10 if anyone should, you should notify me immediately.

11 Hold yourselves completely apart from the people
12 involved in this case; the parties, the witnesses, the
13 attorneys and the persons associated with them. As you can
14 see, there are a number of lawyers. There will be a number of
15 witnesses.

16 During the trial of this case you will bump into
17 them in the hallway or ride an elevator with them. Again,
18 don't discuss the case with them, and don't even strike up any
19 conversation with them. And I am instructing them likewise.
20 Even though you might be talking about a baseball game this
21 weekend, it is important that you not only be impartial, but
22 that you give the appearance of impartiality.

23 If the other side saw you talking to somebody on the
24 other side of the case, they might wonder what you are talking
25 about. So your instructions are to hold yourself completely

1 apart. They won't think you are being rude, and don't you
2 think they are being rude.

3 Now, I also want to instruct you that if any of you
4 have a social networking Internet site or tool such as
5 Facebook, MySpace or Twitter, you should not discuss the case
6 or even mention it at all on those sites.

7 So if any of you are members of those sites, don't
8 make any reference to this case on any of those sites.
9 Definitely do not post any updates about what is going on in
10 the case. Do not send or receive text messages about this
11 case.

12 Again, it is important not only that you be fair and
13 impartial but that you appear to be fair and impartial. Any
14 outside contact of any kind is strictly forbidden.

15 And I am also going to instruct you that you should
16 not make any independent investigation of any fact or matter
17 in this case. Do not learn anything about the case from any
18 other source. Do not watch television or read the newspaper
19 about this case.

20 I don't think there will be anything in the paper or
21 on the news; but if there should, flip the channel or turn the
22 page. Don't read it.

23 Also -- and this is very important -- do not use the
24 Internet or Google to find out information about the case, the
25 parties, or the attorneys in the case.

1 Again, if you were to go onto Google, you would be
2 violating this Court's instructions. You would be frustrating
3 the process of trying this case based on the evidence because
4 you would be going to a source other than legally-admissible
5 evidence. So do not make any investigation whatsoever. Don't
6 go home and Google up the names of the parties. Don't visit
7 any parties' website or anything of that nature.

8 If you did that -- we are going to spend a week in
9 this trial. There is a lot of your time going to be invested
10 in it, a lot of this Court's time, a lot of expense for both
11 parties. But if you were to do something like that, it could
12 mean that we would have to start this case all over again with
13 a different jury.

14 Do you understand the importance of these
15 instructions?

16 All right. Now, the trial of this case will start
17 next Monday, April 26th. I will give you more specific
18 instructions about the case at that time. When you come in, I
19 will give you some very detailed instructions about the case,
20 about the law. You will then hear opening statements by the
21 attorneys. And then we will get started hearing the
22 evidence.

23 Now, I would encourage you to check the status of
24 this case, and you can do that by calling the 1-800 number.
25 Does everyone have that 1-800 number that they gave you

1 downstairs? Anyone that doesn't have it? I can give it to
2 you again if you need it. Anybody need it?

3 I would encourage you to check that periodically,
4 ideally Sunday night, just to be sure there has not been a
5 delay or something has developed with the case. If there is
6 any change as to when you should report or anything else, we
7 will note -- that will be our method of notifying you.

8 All right. Are there any questions from any members
9 of the jury?

10 Okay. Again, I want to thank you for your service
11 on this jury. As I told you before, you are performing a very
12 important function in our judicial process. I think you are
13 going to find this interesting. I think you are going to find
14 it a good experience. I try a lot of these patent cases in my
15 court, and I have seen a lot of jurors sit there just like you
16 are on the first day that you are chosen, and they are going,
17 what am I doing here?

18 And I want to reassure you that you should not be
19 intimidated at all. You are going to hear a lot of testimony.
20 Both sides are going to do a very good job of simplifying this
21 case for you. They will have experts that will help explain
22 it to you. And I am confident that by the time you reach the
23 end of the evidence in this case and begin your deliberations,
24 that you are going to feel very good about this experience and
25 very confident about the decisions that you have to make in

1 the case.

2 So with that encouragement, the Court thanks you for
3 your attendance here today. I am going to ask the Court
4 Security Officer to take you out through the jury room. This
5 will be sort of your home next week, so this is where you will
6 come to. In just a moment I will ask you to follow him in the
7 jury room. He will show you how to get in from the outside
8 door, and that is where you will assemble in the morning.

9 We will plan to have some coffee and doughnuts and
10 some snacks for you. We try to take good care of our juries
11 while they are in jury service. So when you come in Monday
12 morning, that is where you will assemble. Try to be here
13 about 5 or 10 minutes early so nobody is running late and
14 delaying the proceedings.

15 So we will see you back here ready to go at 9:00 on
16 Monday morning. The jury is excused to the jury room.

17 (Jury out.)

18 THE COURT: Please be seated.

19 All right. We have some pretrial matters to take up
20 in this case, but it is past 12:00, so I think we will be
21 adjourned until 1:30. We will come back at 1:30 and take up
22 those pretrial matters, so anything before we recess?

23 MR. ROTH: None from the plaintiff, Your Honor.

24 MR. SAYLES: None from the defense.

25 THE COURT: Ladies and Gentlemen of the Jury Panel,

1 thank you for your jury service. All of you are all excused
2 at this time. You can turn in your badges downstairs. Thank
3 you for being here.

4 We will be in recess until 1:30.

5 (Unselected jury panel members excused.)

6 (Voir Dire concluded.)

7

8 C E R T I F I C A T I O N

9

10 I certify that the foregoing is a correct transcript from the
11 record of proceedings in the above-entitled matter.

12

13

14 /s/ Shea Sloan

15 SHEA SLOAN, CSR, RPR
OFFICIAL COURT REPORTER
16 STATE OF TEXAS NO. 3081

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